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**IN THE
COURT OF APPEALS OF INDIANA**

EDWARD ROBINSON,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A04-0602-CR-101

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant Hawkins, Judge
Cause No. 49G05-0510-CF-179114

September 26, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Edward Robinson appeals his convictions for theft, a Class D felony, and burglary, a Class C felony. We affirm.

Issue

The sole issue on appeal is whether the evidence was sufficient to support Robinson's convictions.

Facts¹

The facts most favorable to the convictions reveal that on October 16, 2005, Wallace Barker, a resident of Chester Avenue located in Indianapolis, heard a sound that he described as “the clanging of metal” coming from the house next door and called the police to report a possible break in. Tr. p. 79. From the inside of his house, Barker was able to observe someone enter the neighboring house and then come out of it carrying items.

Shortly thereafter, Indianapolis Police Officer James Gray arrived at the Chester Avenue home and observed a shopping cart containing electronic equipment and metal pipes sitting in the yard. As Officer Gray watched the rear entrance to the house, he heard the sounds of movement from inside the house and saw someone, whom he later

¹ We remind Robinson that, pursuant to Indiana Appellate Rule 46(A)(6)(b), “The facts shall be stated in accordance with the standard of review appropriate to the judgment or order being appealed.” In a challenge to the sufficiency of the evidence supporting a criminal conviction, we consider “only the evidence most favorable to the judgment, together with all reasonable and logical inferences to be drawn therefrom.” Buntin v. State, 838 N.E.2d 1187, 1189 (Ind. Ct. App. 2005) (emphasis added). Robinson's statement of facts does not meet this standard.

identified as Robinson, run out the back door. Officer Gray ordered Robinson to stop, but Robinson continued his flight. Officer Gray chased Robinson for several blocks. After a short skirmish with Robinson and with the assistance of a second officer, Officer Gray was able to handcuff Robinson and return with him to the Chester Avenue house.

Shortly after police apprehended Robinson, the owner of the house, Anthony Edwards, arrived on the scene and was able to identify the electronic equipment in the shopping cart and indicated that the boarded-up rear door of the house had been forcefully opened. Edwards further indicated that he had not given Robinson permission to enter the house.

On October 17, 2005, the State charged Robinson with burglary, theft, and two counts of resisting law enforcement. On January 5, 2006, a jury trial was held, and the jury found Robinson guilty of burglary, theft, and one count of resisting law enforcement. The second count of resisting law enforcement, upon which the jury could not agree, was dismissed. Robinson now appeals his convictions for burglary and theft.

Analysis

In reviewing a challenge to the sufficiency of the State's evidence, we consider only the evidence most favorable to the fact-finder's conclusions and all reasonable and logical inferences that can be drawn therefrom. Pinkston v. State, 836 N.E.2d 453, 464 (Ind. Ct. App. 2005), trans. denied. We must affirm the fact-finder's decision if it is supported by substantial evidence of probative value. Id. We are not in a position to reweigh the evidence or assess the credibility of the witnesses. Id.

Robinson contends that the State's evidence was insufficient to support his convictions for burglary and theft because he believed that the property he removed from the Chester Avenue house was abandoned. We disagree and conclude there is ample evidence to support Robinson's convictions. Robinson's mistake of fact argument is merely an invitation to reweigh the evidence and assess the witnesses' credibility. Given our standard of review, we are prohibited from doing so.

The Indiana Code defines burglary as breaking and entering the building or structure of another person, with intent to commit a felony in it. Ind. Code § 35-43-2-1. Edwards testified that "from the time [he] purchased the property until [he was] called there by the police, the back door had always been shut and covered by boards[.]" Tr. p. 196. Similarly, Barker testified that the day before the break in, the back door of the Chester Avenue house had been shut. Id. at 82. Yet on the evening Robinson was arrested, the condition of the back door was very different. Edwards testified, "someone had pushed it open or kicked it open. To get into it would have taken quite, cause . . . there's six boards that I can see to count were, you can count that are not affixed to the wall." Id. at 187. It does not require an Olympian leap of logic for us to infer that Robinson, whom Barker and Officer Gray observed moving around inside the residence, exerted at least a slight amount of force in order to gain entry to the building. See McKinney v. State, 653 N.E.2d 115, 117 (Ind. Ct. App. 1995) ("In order to establish that a breaking has occurred, the State need only introduce evidence from which the trier of fact could reasonably infer that the slightest force was used to gain unauthorized entry.").

Finally, the State was required to prove beyond a reasonable doubt that Robinson had intent to commit theft when he broke and entered the Chester Avenue house. Such intent may be inferred from, “the circumstantial evidence of the nature of the crime[,] . . . a defendant’s subsequent conduct inside the premises[,] . . . [or] from the time, force and manner of entry where there is no evidence that the entry was made with some lawful intent.” Gentry v. State, 835 N.E.2d 569, 573 (Ind. Ct. App. 2005). Here, Robinson chose to approach the Chester Avenue house after dark at approximately 7:30 p.m. In order to gain access to the house, Robinson exerted a significant amount of force in order to open a previously-boarded-shut door at the rear of the residence. Finally, despite Robinson’s claim that he believed the house was unoccupied and the property within it abandoned, the jury chose to reject this argument and instead believed that Robinson did not enter with lawful intent. We may not disturb this finding, and conclude that, pursuant to Gentry, the evidence is sufficient to support the inference that Robinson intended to commit the crime of theft when he entered the Chester Avenue house.

The Indiana Code defines theft as knowingly or intentionally exerting unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use. I.C. § 35-43-4-2. Here, both Barker and Officer Gray testified that they observed Robinson removing items from the Chester Avenue house. As we have already observed, Robinson’s intent to deprive the items’ owner of their value or use can be inferred from the circumstances surrounding his actions. It was reasonable for the jury to conclude that Robinson intended to commit the crime of theft, and we may not disturb that determination.

Conclusion

The evidence is sufficient to support Robinson's convictions. We affirm.

Affirmed.

SULLIVAN, J., and ROBB, J., concur.